

REMARKS

Claims 3-22 are pending.

Claims 1 and 2 have been canceled without prejudice.

Claim 3 has been amended to be in independent form.

Claims 10, 11 and 15-22 have been amended to depend from claim 3.

Claims 12-22 are withdrawn from consideration as being drawn to nonelected subject matter.

No new matter has been added by way of the above-amendment.

Election/Restriction

In the outstanding Office Action, the Examiner has imposed a Restriction Requirement under 35 USC 121 as follows:

- I. Claims 1-11, drawn to a compound of formula I, classified in class 546, subclass 121;
- II. Claims 12-14 in part, drawn to a phenyl compound wherein M is a B containing group, classified in class 556, subclass 7;
- III. Claims 12-14 in part, drawn to a phenyl compound wherein M is a Sn containing group, classified in class 556, subclass 81; and
- IV. Claims 15-22, drawn to multiple methods of use. If this group were elected, election of a single disease is required. Further restriction may be required.

In response to the Examiner's Restriction Requirement, Applicants affirm the election of group I, claims 1-11, with traverse.

According to MPEP §803, if the search and examination of an entire application can be made without a serious burden, the Examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions. As evidence of the undue burden, the Examiner has listed that class 546/subclass 121 is to be searched for Group I, class 556/subclass 7 is to be searched for Group II, and class 556/subclass 81 is to be searched for Group III. In view of: i) the fact that there are only three subclasses needed to be searched; and ii) the fact that the computer searching software available to the Examiner enables the Examiner to combine the search for patents in multiple subclasses without having to view duplicates, the search of the extra subclass(es) would not amount to an undue burden on the Examiner to consider all of claims 1-22. As such, Applicants respectfully request that the Examiner rejoins Groups II-IV with elected Group I.

However, should the Examiner maintain the restriction requirement, Applicants respectfully remind the Examiner that should the product claims be found allowable, the process claims of Group IV (claims 15-22) which depend from and include all the limitations of the allowable product claims are to be rejoined, see MPEP § 821.04.

Prior Art Based Issues

Claims 1 and 2 are rejected under 35 U.S.C. 102(e) **and** under 35 U.S.C. 103(a) as being unpatentable over Fu (US Pre-Grant Publication 2004/0002511). Applicants respectfully traverse the rejection.

In view of the cancellation of claims 1 and 2 (without prejudice), Applicants respectfully submit that this rejection is rendered moot.

Double Patenting

Claims 1-2 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No. 10/250,693. Applicants respectfully traverse the provisional rejection.

In view of the cancellation of claims 1 and 2 (without prejudice), Applicants respectfully submit that this provisional rejection is rendered moot.

Allowable Subject Matter

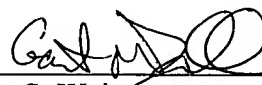
Applicants note with appreciation that the Examiner has indicated that claims 3-11 are allowable.

With the above remarks, Applicants believe that the claims, as they now stand, define patentable subject matter such that passage of the instant invention to allowance is warranted. A Notice to that effect is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact **Garth M. Dahlen, Ph.D., Esq.** (Reg. No. 43,575) at the telephone number of the undersigned below.

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Respectfully submitted,

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